

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION  
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT  
SECURITIES LLC,

Defendant,

In re:

BERNARD L. MADOFF,

Debtor.

IRVING H. PICARD, Trustee for the  
Substantively Consolidated SIPA Liquidation of  
Bernard L. Madoff Investment Securities LLC  
and Bernard L. Madoff,

Plaintiff,

v.

SOCIETE GENERALE PRIVATE BANKING  
(SUISSE) S.A. (f/k/a SG Private Banking Suisse  
S.A.), individually and as successor in interest to  
Societe Generale Private Banking (Lugano-  
Svizzera) S.A.; SOCGEN NOMINEES (UK)  
LIMITED; LYXOR ASSET MANAGEMENT  
INC. (f/k/a SG Asset Management, Inc.), as  
General Partner of SG AM AI Premium Fund  
L.P.; SG AUDACE ALTERNATIF (f/k/a  
SGAM AI Audace Alternatif), now acting by  
and through its manager, Lyxor Asset  
Management S.A.S.; SGAM AI EQUILIBRIUM  
FUND (f/k/a SGAM Alternative Diversified  
Fund), now acting by and through its liquidator,  
KPMG Advisory Sarl; LYXOR PREMIUM  
FUND (f/k/a SGAM Alternative Multi Manager  
Diversified Fund), now acting by and through its  
trustee, Societe Generale S.A.; SOCIETE  
GENERALE S.A., as Trustee for Lyxor

Adv. Pro. No. 08-01789 (CGM)

SIPA Liquidation  
(Substantively Consolidated)

Adv. Pro. No. 12-01677 (CGM)

Premium Fund and Successor in Interest to  
Banque de Reescompte et de Placement a/k/a  
Barep and to Societe Generale Asset  
Management Banque d/b/a Barep; SOCIETE  
GENERALE LUXEMBOURG (f/k/a Societe  
Generale Bank & Trust S.A.); OFI MGA  
ALPHA PALMARES (f/k/a Oval Alpha  
Palmares); OVAL PALMARES EUROPLUS;  
and UMR SELECT ALTERNATIF;

Defendants.

**ORDER DENYING THE OFI DEFENDANTS’  
MOTION TO DISMISS THE COMPLAINT**

Defendants OFI MGA Alpha Palmares (f/k/a Oval Alpha Palmares), Oval Palmares Europlus, and UMR Select Alternatif (collectively, the “OFI Defendants”, and together with Irving H. Picard, as trustee for the substantively consolidated liquidation of Bernard L. Madoff Investment Securities LLC under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa–III, and the chapter 7 estate of Bernard L. Madoff, the “Parties”) filed a motion to dismiss the Complaint under Bankruptcy Rule 7012(b) and Federal Rules of Civil Procedure 12(b)(2) and 12(b)(6) (the “OFI Motion”) on April 29, 2022 (ECF No. 139). The parties stipulated to rest on their papers and waive oral argument (ECF No. 185) on all aspects of the OFI Motion other than those related to the OFI Defendants’ status as *fonds commun de placement* (“FCPs”) under Article 214 of the French Monetary and Financial Code and the OFI Defendants’ argument that FCPs lack legal existence under French law and lack the capacity to be sued (the “FCP Issue”). The FCP Issue of the OFI Motion came on for hearing before the Court on September 19, 2022 (the “Hearing”). The Court has considered the OFI Motion, the papers filed in support of and in opposition to the OFI Motion, the Complaint, and the statements of counsel at the Hearing, and the Court has issued a memorandum decision, dated September 19, 2022, memorializing an oral

ruling upon record of the Hearing, regarding the OFI Motion (the “Decision”). Based on the record in this adversary proceeding, including the Decision, IT IS ORDERED:

1. The OFI Motion to dismiss the Complaint is denied.
2. The deadline for the OFI Defendants to file an answer to the Complaint is November 1, 2022.
3. The Court shall retain jurisdiction to implement or enforce this Order.

**Dated: October 3, 2022**  
**Poughkeepsie, New York**



**/s/ Cecelia G. Morris**

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**Hon. Cecelia G. Morris**  
**U.S. Bankruptcy Judge**